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# **AN INDEPENDENT REGULATORY BODY FOR TELECOMMUNICATIONS**

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## AN INDEPENDENT REGULATORY BODY FOR TELECOMMUNICATIONS

**Why Have an Independent Regulator.** The telecommunications sector has two characteristics which make the sector extremely risky for investors.

- 1) Investment returns in telecommunications depend heavily on government rules. At the same time, telecommunications is *highly regulated* in all countries of the world, even in the United States where the regulatory role of government has been reduced as much as possible.
- 2) Telecommunications is extremely *capital intensive* and usually yields a positive return on investment only many years after the initial investment.

As a result of these two factors, investments in the telecommunications sector are subject to a high degree of *regulatory risk*. This is the risk that regulations may change and thereby lead to lower returns before investors can recover their money.

In both developed and developing countries, huge amounts of capital are needed to build-out networks and to adopt existing networks to rapidly changing technologies. This is particularly the case in Indonesia, which has one of the lowest teledensities in Asia. In order to reduce *regulatory risk* and thereby increase investment, many countries have, or are in the process, of establishing *independent* regulatory bodies for telecommunications (See attached newspaper article from Ireland as an example). These regulatory bodies consist of experts who are given decision authority over complex technical and economic matters as set forth in the telecommunications laws of their respective countries.

**What is Meant by “Independence” of the Regulatory Body.** Making the regulatory process “independent” is one way to reduce the risk of telecommunications investment. As viewed by investors, the regulatory body must have the power to make government “commitments” of sufficient credibility and duration so that investors are willing to invest in telecommunications infrastructure. Independence in this context has several meanings.

- 1) The regulatory body should be independent of the companies that are being regulated. This ensures that the decisions of the regulatory body are not biased toward one company or another.
- 2) The regulatory body should be independent of day-to-day political pressures. This ensures that changes in government or changes in Ministers do not lead to abrupt changes in regulatory policies.
- 3) Decision authority within the regulatory body should be independent of any single individual. This ensures more stability in the regulatory process.

“Independence” does not mean that the regulatory body is separate from government. In all APEC countries, for example, telecommunications regulatory bodies are part of government and are staffed by civil servants.

Nor does “independence” mean unaccountable. An independent regulatory body, as part of government, is accountable to the highest levels of government, which ensure that the regulatory body is performing its work in accordance with the Law.

**How Can Independence be Achieved.** Typical characteristics of a regulatory body with a high degree of independence are:

- 1) Decisions of the regulatory body are final and are not subject to approval by other parts of government. However, such decisions are subject to judicial review in order to ensure that they conform with the law. As indicated above, a regulatory body is also accountable to the highest levels of government.

2) In those countries where a Ministry has responsibility for state-owned telecommunications companies, these responsibilities should be clearly distinguished from regulatory functions. One way to do this is to establish a regulatory body that is separate from the Ministry.

3) Final Decision Authority of the regulatory body rests with three or more commissioners (or Board Members). In countries with a high degree of independence, the President, with approval of the Legislature, is responsible for appointing commissioners.

4) Commissioners serve fairly lengthy terms (e.g., five years) and can only be terminated because of death, conviction of a crime, resignation, illness, malfeasance, etc. This ensures that commissioners cannot be dismissed simply because their decisions are politically unpopular. An example of this type of position in Indonesia is the "Governor of Bank Indonesia."

5) To have even greater stability in the regulatory process, terms of the commissioners can be staggered so that only one new commissioner is appointed per year.

An example of an Indonesian independent agency with the above characteristics is the Business Competition Supervisory Committee that was recently established under Indonesia's "Law on the Prohibition of Monopolistic Practices and Unfair Business Competition."

***Responsibilities of the Independent Regulator.*** An independent regulator is staffed by technical experts who implement regulatory policies within the guidelines set forth in a country's telecommunications law. The regulatory body should also have the power to collect data, investigate, levy fines and revoke licenses, refer matters to the courts for criminal and civil prosecutions, and refer matters to other regulatory agencies such as anti-monopoly commissions. Examples of policies in Indonesia's Telecommunications Law of 1999 which might be handled by an independent regulator are:

- 1) Allocation of radio frequencies for commercial use;
- 2) Licensing telecommunications operators;
- 3) Establishing interconnection rates/rules and tariffs for dominant telecommunications operators;
- 4) Administering universal service obligations;
- 5) Setting standards and monitoring compliance;
- 6) Performing other regulatory functions as indicated in the Law, such as those pertaining to consumer protection and monopolistic practices.

If an independent regulatory body is established in Indonesia, responsibilities for the above policies would be transferred to the regulatory body. The Ministry would still retain broad control over telecommunications policy, management of government frequencies, government procurement of telecommunications equipment, representing the government in international forums (Intelsat, ITU, APEC, etc.), and coordination of government-sponsored research and development.